

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

CRP.No. 1902 OF 2003()

AGAINST THE ORDER IN IA.275/03 IN
OS.17/2002 OF SUB COURT, NEDUMANGAD

REVN. PETITIONER: PETITIONER:

KERALA FINANCIAL CORPORATION,
REPRESENTED BY ITS DEPUTY MANAGER (LEGAL),
VELLAYAMBALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.L.MOHANAN
SMT.LIGEY ANTONY

RESPONDENTS: COUNTER PETITIONERS (PLAINTIFF & DEFENDANT):

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1. AMBIKA,
RESIDING AT PLOT NO.7, PONNARA NAGAR,
HOUSING BOARD COLONY, NEDUMANGAD.
 2. ABDUL SALAM,
KUZHIVILAKATHU KADAYIL VEEDU, NEAR GOVT.HOSPITAL,
NEDUMANGAD, PROPRIETOR BISMI HOTEL,
NEAR GOVT. HOSPITAL, NEDUMANGAD.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P.R. RAMAN, J.
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C.R.P. NO. 1902 OF 2003
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DATED THIS, THE 20TH DAY OF JULY, 2007.

ORDER

This revision is directed against the order in I.A. No. 275/2003 in O.S. No. 17/2002 on the file of the Sub Judge, Nedumangad. It is a claim petition filed by the petitioner herein seeking to lift the attachment made on the property belonging to the second respondent (who is the second defendant in the suit) instituted by the first respondent as plaintiff. The court below, in an application filed by the first respondent/plaintiff, attached the property in question. This fact of attachment was brought to the notice of the petitioner herein by a letter sent by the first respondent which is stated to be received by the petitioner herein on 25.2.2002. Petitioner herein is the Kerala Financial Corporation constituted under the Kerala Financial Corporation Act. According to them, the property under attachment was already mortgaged in their favour by way of security towards the loan advanced to the second respondent herein and since there is a prior encumbrance by way of mortgage in favour of the Financial Corporation, they sought to lift the attachment. They have produced Ext.A1 agreement executed by the second respondent (defendant) in favour

of the petitioner. The original of the title deed was also produced as Ext.A2 in the case. But the court below proceeded to hold that the petitioner herein did not prove the mortgage by deposit of title deeds in favour of them and dismissed the claim petition against which this revision is filed.

2. According to the court below, there should be a memorandum of title deed signed by the parties to show their intention to create equitable mortgage and no such memorandum is produced. Further, if the mortgage was created on 15.3.1996, there is some delay in filing the claim petition. These are the reasons which weighed with by the court below in rejecting the claim petition.

3. As per Section 58 (f) of the Transfer of Property Act, where a person, in any of the specified towns as notified in the Official Gazette, delivers to a creditor or his agent, documents of title to immovable property, with the intention to create a security thereon, such transaction is called a mortgage by deposit of title deeds. There is no particular manner in which such transaction is required to be proved. In order to complete a transaction by way of mortgage by deposit of title deeds, the essentialities are that the original document should be delivered to the creditor or his agent, with the intention to create a security thereon. The memorandum of deposit of title deeds normally is an acknowledgment of the fact of deposit

of title deed. On the other hand, if the memorandum itself evidences the transaction then it may require registration. Therefore, the creation of mortgage by deposit of title deeds could be proved by satisfactory evidence. and the memorandum of deposit of title deed in the form of an acknowledgment or confirmation could be a best form of such proof but not the only way to prove the transaction.

4. In this case, Ext.A1 agreement in original is produced before the court which would evidence the fact that the defendant had approached the Financial Corporation for availing a loan and that the defendant had, for the purpose of availing such loan, agreed to mortgage the properties by way of security. The original title deed itself is coming from the petitioner herein (creditor) which is certainly a strong indication that the agreement has been acted upon and pursuant thereto the document in the normal course is presumed to have been deposited unless it is disputed by the judgment debtor and proves otherwise. Further, petitioner himself has submitted that the memorandum of deposit of title deed has been produced before another court. True that the petitioner did not take any steps either to get the certified copy of title deed or to call for the records by filing a proper application before the court. But failure to take such steps shall not defeat a valid claim, if it exists, especially since the amount was advanced by a

public financial undertaking and hence is public money.

5. It has to be noticed in this connection that the Corporation has also pointed out that they have already taken action under the Kerala State Financial Corporation Act for sale of the property. As I have already indicated, the approach made by the court below that the memorandum of deposit of title deed is only a mode of proof of transaction is not correct. Therefore, the order passed by the court below is set aside and the matter is remitted to the court below for fresh consideration. Petitioner herein is given an opportunity to produce such additional materials/evidence in support of his case. The parties shall appear before the court below on 4.9.2007.

P.R. RAMAN,
(JUDGE)

knc/-

CRP 1902/2003

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P.R. RAMAN, J.

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C.R.P. NO. 1902/2003

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20TH JULY, 2007.